APPENDIX

Revenue Act of 1936, c. 690, 49 Stat. 1648, as amended by the Revenue Act of 1937, c. 815, 50 Stat. 813, Sec. 1:

> SEC. 355. UNDISTRIBUTED ADJUSTED NET INCOME.
>
> For the purposes of this title the term "undistributed adjusted net income" means the adjusted net income (as defined in section 356) minus—
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> * * * * *
>
> (b) Amounts used or irrevocably set aside to pay or to retire indebtedness of any kind incurred prior to January 1, 1934, if such amounts are reasonable with reference to the size and terms of such indebtedness.

Treasury Regulations 94, promulgated under the Revenue Act of 1936:

> ART. 355–2. [As amended by T. D. 4791, 1938–1 Cum. Bull. 83, 108–109.] *Amounts used or irrevocably set aside to pay or to retire indebtedness of any kind incurred prior to January 1, 1934.*—(*a*) *Indebtedness.*—The term "indebtedness" means an obligation, absolute and not contingent, to pay, on demand or within a given time, in cash or other medium, a fixed amount. The term "indebtedness" does not include the obligation of a corporation on its capital stock.
>
> The indebtedness must have been incurred (or, if incurred by assumption, assumed) by the taxpayer prior to January 1, 1934.

An indebtedness evidenced by bonds, notes, or other obligations issued by a corporation is ordinarily incurred as of the date such obligations are issued and the amount of such indebtedness is the amount represented by the face value of the obligations. In the case of renewal or other changes in the form of an indebtedness, so long as the relationship of debtor and creditor continues between the taxpayer and his creditor, the giving of a new promise to pay by the taxpayer will not have the effect of changing the date the indebtedness was incurred.

(*b*) *Amounts used or irrevocably set aside.*—The deduction is allowable, in any taxable year, only for amounts used or *irrevocably* set aside in that year. The use or irrevocable setting aside must be to effect the extinguishment or discharge of indebtedness. Since, therefore, in the case of renewal and other changes in the form of an indebtedness, the relationship of debtor and creditor continues between the taxpayer and his creditor, the mere giving of a new promise to pay by the taxpayer will not result in an allowable deduction. If amounts are set aside in one year, no deduction is allowable for such amounts for a later year in which actually paid. As long as all other conditions are satisfied, the aggregate amount allowable as a deduction for any taxable year includes all amounts (from whatever source) used and, as well, all amounts (from whatever source) *irrevocably* set aside, irrespective of whether in cash or other medium. Double deductions are not permitted.

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(*d*) *General.*—The burden of proof will rest upon the taxpayer to sustain the deduction claimed. Therefore, the taxpayer must furnish the information required by the return, and such other information as the Commissioner may require in substantiation of the deduction claimed.

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